

## **Amendment to H.R. 975, As Reported**

### **Offered by Mr. Toomey of Pennsylvania**

Strike section 901 of the bill, as reported, and all that follows through section 905 and insert the following new sections:

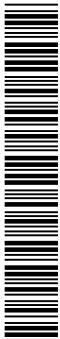
1 **SEC. 901. TREATMENT OF CERTAIN AGREEMENTS BY CON-**  
2 **SERVATORS OR RECEIVERS OF INSURED DE-**  
3 **POSITORY INSTITUTIONS.**

4 (a) DEFINITION OF QUALIFIED FINANCIAL CON-  
5 TRACT.—

6 (1) FDIC-INSURED DEPOSITORY INSTITU-  
7 TIONS.—Section 11(e)(8)(D) of the Federal Deposit  
8 Insurance Act (12 U.S.C. 1821(e)(8)(D)) is  
9 amended—

10 (A) by striking “subsection—” and insert-  
11 ing “subsection, the following definitions shall  
12 apply:”; and

13 (B) in clause (i), by inserting “, resolution,  
14 or order” after “any similar agreement that the  
15 Corporation determines by regulation”.



1           (2) INSURED CREDIT UNIONS.—Section  
2       207(c)(8)(D) of the Federal Credit Union Act (12  
3       U.S.C. 1787(c)(8)(D)) is amended—

4           (A) by striking “subsection—” and insert-  
5       ing “subsection, the following definitions shall  
6       apply:”; and

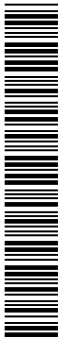
7           (B) in clause (i), by inserting “, resolution,  
8       or order” after “any similar agreement that the  
9       Board determines by regulation”.

10       (b) DEFINITION OF SECURITIES CONTRACT.—

11           (1) FDIC-INSURED DEPOSITORY INSTITU-  
12       TIONS.—Section 11(e)(8)(D)(ii) of the Federal De-  
13       posit Insurance Act (12 U.S.C. 1821(e)(8)(D)(ii)) is  
14       amended to read as follows:

15           “(ii) SECURITIES CONTRACT.—The  
16       term ‘securities contract’—

17           “(I) means a contract for the  
18       purchase, sale, or loan of a security, a  
19       certificate of deposit, a mortgage loan,  
20       or any interest in a mortgage loan, a  
21       group or index of securities, certifi-  
22       cates of deposit, or mortgage loans or  
23       interests therein (including any inter-  
24       est therein or based on the value  
25       thereof) or any option on any of the

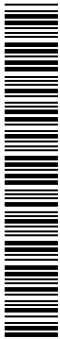


1           foregoing, including any option to  
2           purchase or sell any such security,  
3           certificate of deposit, mortgage loan,  
4           interest, group or index, or option,  
5           and including any repurchase or re-  
6           verse repurchase transaction on any  
7           such security, certificate of deposit,  
8           mortgage loan, interest, group or  
9           index, or option;

10                   “(II) does not include any pur-  
11                   chase, sale, or repurchase obligation  
12                   under a participation in a commercial  
13                   mortgage loan unless the Corporation  
14                   determines by regulation, resolution,  
15                   or order to include any such agree-  
16                   ment within the meaning of such  
17                   term;

18                   “(III) means any option entered  
19                   into on a national securities exchange  
20                   relating to foreign currencies;

21                   “(IV) means the guarantee by or  
22                   to any securities clearing agency of  
23                   any settlement of cash, securities, cer-  
24                   tificates of deposit, mortgage loans or  
25                   interests therein, group or index of se-



1 securities, certificates of deposit, or  
2 mortgage loans or interests therein  
3 (including any interest therein or  
4 based on the value thereof) or option  
5 on any of the foregoing, including any  
6 option to purchase or sell any such se-  
7 curity, certificate of deposit, mortgage  
8 loan, interest, group or index, or op-  
9 tion;

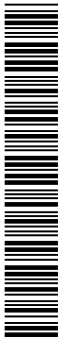
10 “(V) means any margin loan;

11 “(VI) means any other agree-  
12 ment or transaction that is similar to  
13 any agreement or transaction referred  
14 to in this clause;

15 “(VII) means any combination of  
16 the agreements or transactions re-  
17 ferred to in this clause;

18 “(VIII) means any option to  
19 enter into any agreement or trans-  
20 action referred to in this clause;

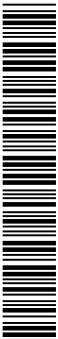
21 “(IX) means a master agreement  
22 that provides for an agreement or  
23 transaction referred to in subclause  
24 (I), (III), (IV), (V), (VI), (VII), or  
25 (VIII), together with all supplements



1 to any such master agreement, with-  
2 out regard to whether the master  
3 agreement provides for an agreement  
4 or transaction that is not a securities  
5 contract under this clause, except that  
6 the master agreement shall be consid-  
7 ered to be a securities contract under  
8 this clause only with respect to each  
9 agreement or transaction under the  
10 master agreement that is referred to  
11 in subclause (I), (III), (IV), (V), (VI),  
12 (VII), or (VIII); and

13 “(X) means any security agree-  
14 ment or arrangement or other credit  
15 enhancement related to any agree-  
16 ment or transaction referred to in this  
17 clause, including any guarantee or re-  
18 imbursement obligation in connection  
19 with any agreement or transaction re-  
20 ferred to in this clause.”.

21 (2) INSURED CREDIT UNIONS.—Section  
22 207(c)(8)(D)(ii) of the Federal Credit Union Act  
23 (12 U.S.C. 1787(c)(8)(D)(ii)) is amended to read as  
24 follows:



1                   “(ii) SECURITIES CONTRACT.—The  
2                   term ‘securities contract’—

3                   “(I) means a contract for the  
4                   purchase, sale, or loan of a security, a  
5                   certificate of deposit, a mortgage loan,  
6                   or any interest in a mortgage loan, a  
7                   group or index of securities, certifi-  
8                   cates of deposit, or mortgage loans or  
9                   interests therein (including any inter-  
10                  est therein or based on the value  
11                  thereof) or any option on any of the  
12                  foregoing, including any option to  
13                  purchase or sell any such security,  
14                  certificate of deposit, mortgage loan,  
15                  interest, group or index, or option,  
16                  and including any repurchase or re-  
17                  verse repurchase transaction on any  
18                  such security, certificate of deposit,  
19                  mortgage loan, interest, group or  
20                  index, or option;

21                  “(II) does not include any pur-  
22                  chase, sale, or repurchase obligation  
23                  under a participation in a commercial  
24                  mortgage loan unless the Board deter-  
25                  mines by regulation, resolution, or



1 order to include any such agreement  
2 within the meaning of such term;

3 “(III) means any option entered  
4 into on a national securities exchange  
5 relating to foreign currencies;

6 “(IV) means the guarantee by or  
7 to any securities clearing agency of  
8 any settlement of cash, securities, cer-  
9 tificates of deposit, mortgage loans or  
10 interests therein, group or index of se-  
11 curities, certificates of deposit, or  
12 mortgage loans or interests therein  
13 (including any interest therein or  
14 based on the value thereof) or option  
15 on any of the foregoing, including any  
16 option to purchase or sell any such se-  
17 curity, certificate of deposit, mortgage  
18 loan, interest, group or index, or op-  
19 tion;

20 “(V) means any margin loan;

21 “(VI) means any other agree-  
22 ment or transaction that is similar to  
23 any agreement or transaction referred  
24 to in this clause;

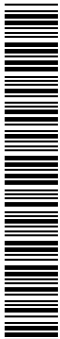


1 “(VII) means any combination of  
2 the agreements or transactions re-  
3 ferred to in this clause;

4 “(VIII) means any option to  
5 enter into any agreement or trans-  
6 action referred to in this clause;

7 “(IX) means a master agreement  
8 that provides for an agreement or  
9 transaction referred to in subclause  
10 (I), (III), (IV), (V), (VI), (VII), or  
11 (VIII), together with all supplements  
12 to any such master agreement, with-  
13 out regard to whether the master  
14 agreement provides for an agreement  
15 or transaction that is not a securities  
16 contract under this clause, except that  
17 the master agreement shall be consid-  
18 ered to be a securities contract under  
19 this clause only with respect to each  
20 agreement or transaction under the  
21 master agreement that is referred to  
22 in subclause (I), (III), (IV), (V), (VI),  
23 (VII), or (VIII); and

24 “(X) means any security agree-  
25 ment or arrangement or other credit





1 enhancement related to any agree-  
2 ment or transaction referred to in this  
3 clause, including any guarantee or re-  
4 imbursement obligation in connection  
5 with any agreement or transaction re-  
6 ferred to in this clause.”.

7 (c) DEFINITION OF COMMODITY CONTRACT.—

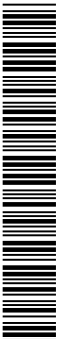
8 (1) FDIC-INSURED DEPOSITORY INSTITU-  
9 TIONS.—Section 11(e)(8)(D)(iii) of the Federal De-  
10 posit Insurance Act (12 U.S.C. 1821(e)(8)(D)(iii)) is  
11 amended to read as follows:

12 “(iii) COMMODITY CONTRACT.—The  
13 term ‘commodity contract’ means—

14 “(I) with respect to a futures  
15 commission merchant, a contract for  
16 the purchase or sale of a commodity  
17 for future delivery on, or subject to  
18 the rules of, a contract market or  
19 board of trade;

20 “(II) with respect to a foreign fu-  
21 tures commission merchant, a foreign  
22 future;

23 “(III) with respect to a leverage  
24 transaction merchant, a leverage  
25 transaction;



1 “(IV) with respect to a clearing  
2 organization, a contract for the pur-  
3 chase or sale of a commodity for fu-  
4 ture delivery on, or subject to the  
5 rules of, a contract market or board  
6 of trade that is cleared by such clear-  
7 ing organization, or commodity option  
8 traded on, or subject to the rules of,  
9 a contract market or board of trade  
10 that is cleared by such clearing orga-  
11 nization;

12 “(V) with respect to a commodity  
13 options dealer, a commodity option;

14 “(VI) any other agreement or  
15 transaction that is similar to any  
16 agreement or transaction referred to  
17 in this clause;

18 “(VII) any combination of the  
19 agreements or transactions referred to  
20 in this clause;

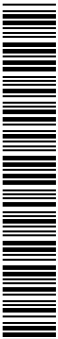
21 “(VIII) any option to enter into  
22 any agreement or transaction referred  
23 to in this clause;

24 “(IX) a master agreement that  
25 provides for an agreement or trans-



1 action referred to in subclause (I),  
2 (II), (III), (IV), (V), (VI), (VII), or  
3 (VIII), together with all supplements  
4 to any such master agreement, with-  
5 out regard to whether the master  
6 agreement provides for an agreement  
7 or transaction that is not a com-  
8 modity contract under this clause, ex-  
9 cept that the master agreement shall  
10 be considered to be a commodity con-  
11 tract under this clause only with re-  
12 spect to each agreement or trans-  
13 action under the master agreement  
14 that is referred to in subclause (I),  
15 (II), (III), (IV), (V), (VI), (VII), or  
16 (VIII); or

17 “(X) any security agreement or  
18 arrangement or other credit enhance-  
19 ment related to any agreement or  
20 transaction referred to in this clause,  
21 including any guarantee or reimburse-  
22 ment obligation in connection with  
23 any agreement or transaction referred  
24 to in this clause.”.



1           (2)   INSURED   CREDIT   UNIONS.—Section  
2       207(c)(8)(D)(iii) of the Federal Credit Union Act  
3       (12 U.S.C. 1787(c)(8)(D)(iii)) is amended to read as  
4       follows:

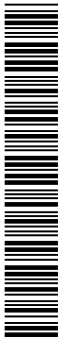
5                   “(iii)   COMMODITY   CONTRACT.—The  
6       term ‘commodity contract’ means—

7                   “(I) with respect to a futures  
8       commission merchant, a contract for  
9       the purchase or sale of a commodity  
10      for future delivery on, or subject to  
11      the rules of, a contract market or  
12      board of trade;

13                  “(II) with respect to a foreign fu-  
14      tures commission merchant, a foreign  
15      future;

16                  “(III) with respect to a leverage  
17      transaction merchant, a leverage  
18      transaction;

19                  “(IV) with respect to a clearing  
20      organization, a contract for the pur-  
21      chase or sale of a commodity for fu-  
22      ture delivery on, or subject to the  
23      rules of, a contract market or board  
24      of trade that is cleared by such clear-  
25      ing organization, or commodity option



1 traded on, or subject to the rules of,  
2 a contract market or board of trade  
3 that is cleared by such clearing organi-  
4 zation;

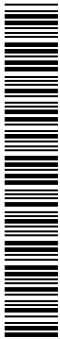
5 “(V) with respect to a commodity  
6 options dealer, a commodity option;

7 “(VI) any other agreement or  
8 transaction that is similar to any  
9 agreement or transaction referred to  
10 in this clause;

11 “(VII) any combination of the  
12 agreements or transactions referred to  
13 in this clause;

14 “(VIII) any option to enter into  
15 any agreement or transaction referred  
16 to in this clause;

17 “(IX) a master agreement that  
18 provides for an agreement or trans-  
19 action referred to in subclause (I),  
20 (II), (III), (IV), (V), (VI), (VII), or  
21 (VIII), together with all supplements  
22 to any such master agreement, with-  
23 out regard to whether the master  
24 agreement provides for an agreement  
25 or transaction that is not a com-



1           modify contract under this clause, ex-  
2           cept that the master agreement shall  
3           be considered to be a commodity con-  
4           tract under this clause only with re-  
5           spect to each agreement or trans-  
6           action under the master agreement  
7           that is referred to in subclause (I),  
8           (II), (III), (IV), (V), (VI), (VII), or  
9           (VIII); or

10                   “(X) any security agreement or  
11                   arrangement or other credit enhance-  
12                   ment related to any agreement or  
13                   transaction referred to in this clause,  
14                   including any guarantee or reimburse-  
15                   ment obligation in connection with  
16                   any agreement or transaction referred  
17                   to in this clause.”.

18           (d) DEFINITION OF FORWARD CONTRACT.—

19                   (1) FDIC-INSURED DEPOSITORY INSTITU-  
20                   TIONS.—Section 11(e)(8)(D)(iv) of the Federal De-  
21                   posit Insurance Act (12 U.S.C. 1821(e)(8)(D)(iv)) is  
22                   amended to read as follows:

23                           “(iv) FORWARD CONTRACT.—The  
24                           term ‘forward contract’ means—



1 “(I) a contract (other than a  
2 commodity contract) for the purchase,  
3 sale, or transfer of a commodity or  
4 any similar good, article, service,  
5 right, or interest which is presently or  
6 in the future becomes the subject of  
7 dealing in the forward contract trade,  
8 or product or byproduct thereof, with  
9 a maturity date more than 2 days  
10 after the date the contract is entered  
11 into, including, a repurchase trans-  
12 action, reverse repurchase transaction,  
13 consignment, lease, swap, hedge  
14 transaction, deposit, loan, option, allo-  
15 cated transaction, unallocated trans-  
16 action, or any other similar agree-  
17 ment;

18 “(II) any combination of agree-  
19 ments or transactions referred to in  
20 subclauses (I) and (III);

21 “(III) any option to enter into  
22 any agreement or transaction referred  
23 to in subclause (I) or (II);

24 “(IV) a master agreement that  
25 provides for an agreement or trans-



1 action referred to in subclauses (I),  
2 (II), or (III), together with all supple-  
3 ments to any such master agreement,  
4 without regard to whether the master  
5 agreement provides for an agreement  
6 or transaction that is not a forward  
7 contract under this clause, except that  
8 the master agreement shall be consid-  
9 ered to be a forward contract under  
10 this clause only with respect to each  
11 agreement or transaction under the  
12 master agreement that is referred to  
13 in subclause (I), (II), or (III); or

14 “(V) any security agreement or  
15 arrangement or other credit enhance-  
16 ment related to any agreement or  
17 transaction referred to in subclause  
18 (I), (II), (III), or (IV), including any  
19 guarantee or reimbursement obliga-  
20 tion in connection with any agreement  
21 or transaction referred to in any such  
22 subclause.”.

23 (2) INSURED CREDIT UNIONS.—Section  
24 207(c)(8)(D)(iv) of the Federal Credit Union Act



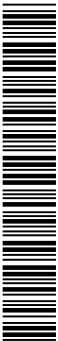


1 (12 U.S.C. 1787(c)(8)(D)(iv)) is amended to read as  
2 follows:

3 “(iv) FORWARD CONTRACT.—The  
4 term ‘forward contract’ means—

5 “(I) a contract (other than a  
6 commodity contract) for the purchase,  
7 sale, or transfer of a commodity or  
8 any similar good, article, service,  
9 right, or interest which is presently or  
10 in the future becomes the subject of  
11 dealing in the forward contract trade,  
12 or product or byproduct thereof, with  
13 a maturity date more than 2 days  
14 after the date the contract is entered  
15 into, including, a repurchase trans-  
16 action, reverse repurchase transaction,  
17 consignment, lease, swap, hedge  
18 transaction, deposit, loan, option, allo-  
19 cated transaction, unallocated trans-  
20 action, or any other similar agree-  
21 ment;

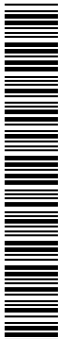
22 “(II) any combination of agree-  
23 ments or transactions referred to in  
24 subclauses (I) and (III);



1           “(III) any option to enter into  
2           any agreement or transaction referred  
3           to in subclause (I) or (II);

4           “(IV) a master agreement that  
5           provides for an agreement or trans-  
6           action referred to in subclauses (I),  
7           (II), or (III), together with all supple-  
8           ments to any such master agreement,  
9           without regard to whether the master  
10          agreement provides for an agreement  
11          or transaction that is not a forward  
12          contract under this clause, except that  
13          the master agreement shall be consid-  
14          ered to be a forward contract under  
15          this clause only with respect to each  
16          agreement or transaction under the  
17          master agreement that is referred to  
18          in subclause (I), (II), or (III); or

19          “(V) any security agreement or  
20          arrangement or other credit enhance-  
21          ment related to any agreement or  
22          transaction referred to in subclause  
23          (I), (II), (III), or (IV), including any  
24          guarantee or reimbursement obliga-  
25          tion in connection with any agreement



1 or transaction referred to in any such  
2 subclause.”.

3 (e) DEFINITION OF REPURCHASE AGREEMENT.—

4 (1) FDIC-INSURED DEPOSITORY INSTITU-  
5 TIONS.—Section 11(e)(8)(D)(v) of the Federal De-  
6 posit Insurance Act (12 U.S.C. 1821(e)(8)(D)(v)) is  
7 amended to read as follows:

8 “(v) REPURCHASE AGREEMENT.—The  
9 term ‘repurchase agreement’ (which defini-  
10 tion also applies to a reverse repurchase  
11 agreement)—

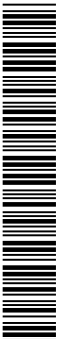
12 “(I) means an agreement, includ-  
13 ing related terms, which provides for  
14 the transfer of one or more certifi-  
15 cates of deposit, mortgage-related se-  
16 curities (as such term is defined in  
17 the Securities Exchange Act of 1934),  
18 mortgage loans, interests in mortgage-  
19 related securities or mortgage loans,  
20 eligible bankers’ acceptances, qualified  
21 foreign government securities or secu-  
22 rities that are direct obligations of, or  
23 that are fully guaranteed by, the  
24 United States or any agency of the  
25 United States against the transfer of



1 funds by the transferee of such certifi-  
2 cates of deposit, eligible bankers' ac-  
3 ceptances, securities, mortgage loans,  
4 or interests with a simultaneous  
5 agreement by such transferee to  
6 transfer to the transferor thereof cer-  
7 tificates of deposit, eligible bankers'  
8 acceptances, securities, mortgage  
9 loans, or interests as described above,  
10 at a date certain not later than 1 year  
11 after such transfers or on demand,  
12 against the transfer of funds, or any  
13 other similar agreement;

14 “(II) does not include any repur-  
15 chase obligation under a participation  
16 in a commercial mortgage loan unless  
17 the Corporation determines by regula-  
18 tion, resolution, or order to include  
19 any such participation within the  
20 meaning of such term;

21 “(III) means any combination of  
22 agreements or transactions referred to  
23 in subclauses (I) and (IV);



1 “(IV) means any option to enter  
2 into any agreement or transaction re-  
3 ferred to in subclause (I) or (III);

4 “(V) means a master agreement  
5 that provides for an agreement or  
6 transaction referred to in subclause  
7 (I), (III), or (IV), together with all  
8 supplements to any such master  
9 agreement, without regard to whether  
10 the master agreement provides for an  
11 agreement or transaction that is not a  
12 repurchase agreement under this  
13 clause, except that the master agree-  
14 ment shall be considered to be a re-  
15 purchase agreement under this sub-  
16 clause only with respect to each agree-  
17 ment or transaction under the master  
18 agreement that is referred to in sub-  
19 clause (I), (III), or (IV); and

20 “(VI) means any security agree-  
21 ment or arrangement or other credit  
22 enhancement related to any agree-  
23 ment or transaction referred to in  
24 subclause (I), (III), (IV), or (V), in-  
25 cluding any guarantee or reimburse-



1                   ment obligation in connection with  
2                   any agreement or transaction referred  
3                   to in any such subclause.

4                   For purposes of this clause, the term  
5                   ‘qualified foreign government security’  
6                   means a security that is a direct obligation  
7                   of, or that is fully guaranteed by, the cen-  
8                   tral government of a member of the Orga-  
9                   nization for Economic Cooperation and  
10                  Development (as determined by regulation  
11                  or order adopted by the appropriate Fed-  
12                  eral banking authority).”.

13                  (2)   INSURED   CREDIT   UNIONS.—Section  
14                  207(c)(8)(D)(v) of the Federal Credit Union Act (12  
15                  U.S.C. 1787(c)(8)(D)(v)) is amended to read as fol-  
16                  lows:

17                         “(v) REPURCHASE AGREEMENT.—The  
18                         term ‘repurchase agreement’ (which defini-  
19                         tion also applies to a reverse repurchase  
20                         agreement)—

21                                 “(I) means an agreement, includ-  
22                                 ing related terms, which provides for  
23                                 the transfer of one or more certifi-  
24                                 cates of deposit, mortgage-related se-  
25                                 curities (as such term is defined in



1 the Securities Exchange Act of 1934),  
2 mortgage loans, interests in mortgage-  
3 related securities or mortgage loans,  
4 eligible bankers' acceptances, qualified  
5 foreign government securities or secu-  
6 rities that are direct obligations of, or  
7 that are fully guaranteed by, the  
8 United States or any agency of the  
9 United States against the transfer of  
10 funds by the transferee of such certifi-  
11 cates of deposit, eligible bankers' ac-  
12 ceptances, securities, mortgage loans,  
13 or interests with a simultaneous  
14 agreement by such transferee to  
15 transfer to the transferor thereof cer-  
16 tificates of deposit, eligible bankers'  
17 acceptances, securities, mortgage  
18 loans, or interests as described above,  
19 at a date certain not later than 1 year  
20 after such transfers or on demand,  
21 against the transfer of funds, or any  
22 other similar agreement;

23 “(II) does not include any repur-  
24 chase obligation under a participation  
25 in a commercial mortgage loan unless

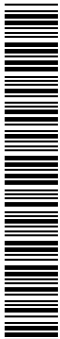


1 the Board determines by regulation,  
2 resolution, or order to include any  
3 such participation within the meaning  
4 of such term;

5 “(III) means any combination of  
6 agreements or transactions referred to  
7 in subclauses (I) and (IV);

8 “(IV) means any option to enter  
9 into any agreement or transaction re-  
10 ferred to in subclause (I) or (III);

11 “(V) means a master agreement  
12 that provides for an agreement or  
13 transaction referred to in subclause  
14 (I), (III), or (IV), together with all  
15 supplements to any such master  
16 agreement, without regard to whether  
17 the master agreement provides for an  
18 agreement or transaction that is not a  
19 repurchase agreement under this  
20 clause, except that the master agree-  
21 ment shall be considered to be a re-  
22 purchase agreement under this sub-  
23 clause only with respect to each agree-  
24 ment or transaction under the master





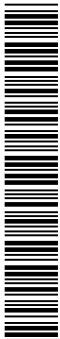
1 agreement that is referred to in sub-  
2 clause (I), (III), or (IV); and

3 “(VI) means any security agree-  
4 ment or arrangement or other credit  
5 enhancement related to any agree-  
6 ment or transaction referred to in  
7 subclause (I), (III), (IV), or (V), in-  
8 cluding any guarantee or reimburse-  
9 ment obligation in connection with  
10 any agreement or transaction referred  
11 to in any such subclause.

12 For purposes of this clause, the term  
13 ‘qualified foreign government security’  
14 means a security that is a direct obligation  
15 of, or that is fully guaranteed by, the cen-  
16 tral government of a member of the Orga-  
17 nization for Economic Cooperation and  
18 Development (as determined by regulation  
19 or order adopted by the appropriate Fed-  
20 eral banking authority).”.

21 (f) DEFINITION OF SWAP AGREEMENT.—

22 (1) FDIC-INSURED DEPOSITORY INSTITU-  
23 TIONS.—Section 11(e)(8)(D)(vi) of the Federal De-  
24 posit Insurance Act (12 U.S.C. 1821(e)(8)(D)(vi)) is  
25 amended to read as follows:



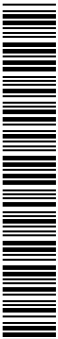
1 “(vi) SWAP AGREEMENT.—The term  
2 ‘swap agreement’ means—

3 “(I) any agreement, including the  
4 terms and conditions incorporated by  
5 reference in any such agreement,  
6 which is an interest rate swap, option,  
7 future, or forward agreement, includ-  
8 ing a rate floor, rate cap, rate collar,  
9 cross-currency rate swap, and basis  
10 swap; a spot, same day-tomorrow, to-  
11 morrow-next, forward, or other for-  
12 eign exchange or precious metals  
13 agreement; a currency swap, option,  
14 future, or forward agreement; an eq-  
15 uity index or equity swap, option, fu-  
16 ture, or forward agreement; a debt  
17 index or debt swap, option, future, or  
18 forward agreement; a total return,  
19 credit spread or credit swap, option,  
20 future, or forward agreement; a com-  
21 modity index or commodity swap, op-  
22 tion, future, or forward agreement; or  
23 a weather swap, weather derivative, or  
24 weather option;



1           “(II) any agreement or trans-  
2           action that is similar to any other  
3           agreement or transaction referred to  
4           in this clause and that is of a type  
5           that has been, is presently, or in the  
6           future becomes, the subject of recur-  
7           rent dealings in the swap markets (in-  
8           cluding terms and conditions incor-  
9           porated by reference in such agree-  
10          ment) and that is a forward, swap, fu-  
11          ture, or option on one or more rates,  
12          currencies, commodities, equity securi-  
13          ties or other equity instruments, debt  
14          securities or other debt instruments,  
15          quantitative measures associated with  
16          an occurrence, extent of an occur-  
17          rence, or contingency associated with  
18          a financial, commercial, or economic  
19          consequence, or economic or financial  
20          indices or measures of economic or fi-  
21          nancial risk or value;

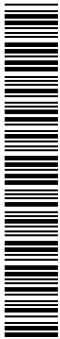
22               “(III) any combination of agree-  
23               ments or transactions referred to in  
24               this clause;



1           “(IV) any option to enter into  
2           any agreement or transaction referred  
3           to in this clause;

4           “(V) a master agreement that  
5           provides for an agreement or trans-  
6           action referred to in subclause (I),  
7           (II), (III), or (IV), together with all  
8           supplements to any such master  
9           agreement, without regard to whether  
10          the master agreement contains an  
11          agreement or transaction that is not a  
12          swap agreement under this clause, ex-  
13          cept that the master agreement shall  
14          be considered to be a swap agreement  
15          under this clause only with respect to  
16          each agreement or transaction under  
17          the master agreement that is referred  
18          to in subclause (I), (II), (III), or (IV);  
19          and

20          “(VI) any security agreement or  
21          arrangement or other credit enhance-  
22          ment related to any agreements or  
23          transactions referred to in subclause  
24          (I), (II), (III), (IV), or (V), including  
25          any guarantee or reimbursement obli-



1                   gation in connection with any agree-  
2                   ment or transaction referred to in any  
3                   such subclause.

4                   Such term is applicable for purposes of  
5                   this subsection only and shall not be con-  
6                   strued or applied so as to challenge or af-  
7                   fect the characterization, definition, or  
8                   treatment of any swap agreement under  
9                   any other statute, regulation, or rule, in-  
10                  cluding the Securities Act of 1933, the Se-  
11                  curities Exchange Act of 1934, the Public  
12                  Utility Holding Company Act of 1935, the  
13                  Trust Indenture Act of 1939, the Invest-  
14                  ment Company Act of 1940, the Invest-  
15                  ment Advisers Act of 1940, the Securities  
16                  Investor Protection Act of 1970, the Com-  
17                  modity Exchange Act, the Gramm-Leach-  
18                  Bliley Act, and the Legal Certainty for  
19                  Bank Products Act of 2000.”.

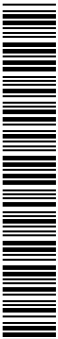
20                  (2)   INSURED   CREDIT   UNIONS.—Section  
21                  207(c)(8)(D) of the Federal Credit Union Act (12  
22                  U.S.C. 1787(c)(8)(D)) is amended by adding at the  
23                  end the following new clause:

24                               “(vi) SWAP AGREEMENT.—The term  
25                               ‘swap agreement’ means—



1           “(I) any agreement, including the  
2 terms and conditions incorporated by  
3 reference in any such agreement,  
4 which is an interest rate swap, option,  
5 future, or forward agreement, includ-  
6 ing a rate floor, rate cap, rate collar,  
7 cross-currency rate swap, and basis  
8 swap; a spot, same day-tomorrow, to-  
9 morrow-next, forward, or other for-  
10 eign exchange or precious metals  
11 agreement; a currency swap, option,  
12 future, or forward agreement; an eq-  
13 uity index or equity swap, option, fu-  
14 ture, or forward agreement; a debt  
15 index or debt swap, option, future, or  
16 forward agreement; a total return,  
17 credit spread or credit swap, option,  
18 future, or forward agreement; a com-  
19 modity index or commodity swap, op-  
20 tion, future, or forward agreement; or  
21 a weather swap, weather derivative, or  
22 weather option;

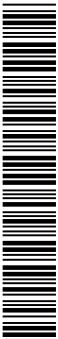
23           “(II) any agreement or trans-  
24 action that is similar to any other  
25 agreement or transaction referred to



1 in this clause and that is of a type  
2 that has been, is presently, or in the  
3 future becomes, the subject of recur-  
4 rent dealings in the swap markets (in-  
5 cluding terms and conditions incor-  
6 porated by reference in such agree-  
7 ment) and that is a forward,  
8 swap, future, or option on one or more  
9 rates, currencies, commodities, equity  
10 securities or other equity instruments,  
11 debt securities or other debt instru-  
12 ments, quantitative measures associ-  
13 ated with an occurrence, extent of an  
14 occurrence, or contingency associated  
15 with a financial, commercial, or eco-  
16 nomic consequence, or economic or fi-  
17 nancial indices or measures of eco-  
18 nomic or financial risk or value;

19 “(III) any combination of agree-  
20 ments or transactions referred to in  
21 this clause;

22 “(IV) any option to enter into  
23 any agreement or transaction referred  
24 to in this clause;



1           “(V) a master agreement that  
2 provides for an agreement or trans-  
3 action referred to in subclause (I),  
4 (II), (III), or (IV), together with all  
5 supplements to any such master  
6 agreement, without regard to whether  
7 the master agreement contains an  
8 agreement or transaction that is not a  
9 swap agreement under this clause, ex-  
10 cept that the master agreement shall  
11 be considered to be a swap agreement  
12 under this clause only with respect to  
13 each agreement or transaction under  
14 the master agreement that is referred  
15 to in subclause (I), (II), (III), or (IV);  
16 and

17           “(VI) any security agreement or  
18 arrangement or other credit enhance-  
19 ment related to any agreements or  
20 transactions referred to in subclause  
21 (I), (II), (III), (IV), or (V), including  
22 any guarantee or reimbursement obli-  
23 gation in connection with any agree-  
24 ment or transaction referred to in any  
25 such subclause.



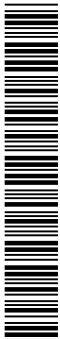


1           Such term is applicable for purposes of  
2           this subsection only and shall not be con-  
3           strued or applied so as to challenge or af-  
4           fect the characterization, definition, or  
5           treatment of any swap agreement under  
6           any other statute, regulation, or rule, in-  
7           cluding the Securities Act of 1933, the Se-  
8           curities Exchange Act of 1934, the Public  
9           Utility Holding Company Act of 1935, the  
10          Trust Indenture Act of 1939, the Invest-  
11          ment Company Act of 1940, the Invest-  
12          ment Advisers Act of 1940, the Securities  
13          Investor Protection Act of 1970, the Com-  
14          modity Exchange Act, the Gramm-Leach-  
15          Bliley Act, and the Legal Certainty for  
16          Bank Products Act of 2000.”.

17       (g) DEFINITION OF TRANSFER.—

18           (1) FDIC-INSURED DEPOSITORY INSTITU-  
19          TIONS.—Section 11(e)(8)(D)(viii) of the Federal De-  
20          posit Insurance Act (12 U.S.C. 1821(e)(8)(D)(viii))  
21          is amended to read as follows:

22                   “(viii) TRANSFER.—The term ‘trans-  
23                   fer’ means every mode, direct or indirect,  
24                   absolute or conditional, voluntary or invol-  
25                   untary, of disposing of or parting with



1 property or with an interest in property,  
2 including retention of title as a security in-  
3 terest and foreclosure of the depository in-  
4 stitution's equity of redemption.”.

5 (2) INSURED CREDIT UNIONS.—Section  
6 207(c)(8)(D) of the Federal Credit Union Act (12  
7 U.S.C. 1787(c)(8)(D)) (as amended by subsection  
8 (f) of this section) is amended by adding at the end  
9 the following new clause:

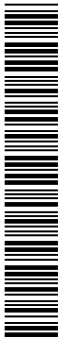
10 “(viii) TRANSFER.—The term ‘trans-  
11 fer’ means every mode, direct or indirect,  
12 absolute or conditional, voluntary or invol-  
13 untary, of disposing of or parting with  
14 property or with an interest in property,  
15 including retention of title as a security in-  
16 terest and foreclosure of the depository in-  
17 stitution's equity of redemption.”.

18 (h) TREATMENT OF QUALIFIED FINANCIAL CON-  
19 TRACTS.—

20 (1) FDIC-INSURED DEPOSITORY INSTITU-  
21 TIONS.—Section 11(e)(8) of the Federal Deposit In-  
22 surance Act (12 U.S.C. 1821(e)(8)) is amended—

23 (A) in subparagraph (A)—

24 (i) by striking “paragraph (10)” and  
25 inserting “paragraphs (9) and (10)”;



1 (ii) in clause (i), by striking “to cause  
2 the termination or liquidation” and insert-  
3 ing “such person has to cause the termi-  
4 nation, liquidation, or acceleration”; and

5 (iii) by striking clause (ii) and insert-  
6 ing the following new clause:

7 “(ii) any right under any security  
8 agreement or arrangement or other credit  
9 enhancement related to one or more quali-  
10 fied financial contracts described in clause  
11 (i);”; and

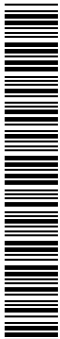
12 (B) in subparagraph (E), by striking  
13 clause (ii) and inserting the following:

14 “(ii) any right under any security  
15 agreement or arrangement or other credit  
16 enhancement related to one or more quali-  
17 fied financial contracts described in clause  
18 (i);”.

19 (2) INSURED CREDIT UNIONS.—Section  
20 207(c)(8) of the Federal Credit Union Act (12  
21 U.S.C. 1787(c)(8)) is amended—

22 (A) in subparagraph (A)—

23 (i) by striking “paragraph (12)” and  
24 inserting “paragraphs (9) and (10)”;



1 (ii) in clause (i), by striking “to cause  
2 the termination or liquidation” and insert-  
3 ing “such person has to cause the termi-  
4 nation, liquidation, or acceleration”; and

5 (iii) by striking clause (ii) and insert-  
6 ing the following new clause:

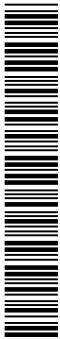
7 “(ii) any right under any security  
8 agreement or arrangement or other credit  
9 enhancement related to 1 or more qualified  
10 financial contracts described in clause  
11 (i);”; and

12 (B) in subparagraph (E), by striking  
13 clause (ii) and inserting the following new  
14 clause:

15 “(ii) any right under any security  
16 agreement or arrangement or other credit  
17 enhancement related to 1 or more qualified  
18 financial contracts described in clause  
19 (i);”.

20 (i) AVOIDANCE OF TRANSFERS.—

21 (1) FDIC-INSURED DEPOSITORY INSTITU-  
22 TIONS.—Section 11(e)(8)(C)(i) of the Federal De-  
23 posit Insurance Act (12 U.S.C. 1821(e)(8)(C)(i)) is  
24 amended by inserting “section 5242 of the Revised  
25 Statutes of the United States or any other Federal



1 or State law relating to the avoidance of preferential  
2 or fraudulent transfers,” before “the Corporation”.

3 (2) INSURED CREDIT UNIONS.—Section  
4 207(c)(8)(C)(i) of the Federal Credit Union Act (12  
5 U.S.C. 1787(c)(8)(C)(i)) is amended by inserting  
6 “section 5242 of the Revised Statutes of the United  
7 States or any other Federal or State law relating to  
8 the avoidance of preferential or fraudulent trans-  
9 fers,” before “the Board”.

10 **SEC. 902. AUTHORITY OF THE FDIC AND NCUAB WITH RE-**  
11 **SPECT TO FAILED AND FAILING INSTITU-**  
12 **TIONS.**

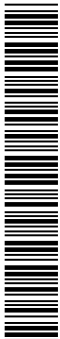
13 (a) FEDERAL DEPOSIT INSURANCE CORPORATION.—

14 (1) IN GENERAL.—Section 11(e)(8) of the Fed-  
15 eral Deposit Insurance Act (12 U.S.C. 1821(e)(8))  
16 is amended—

17 (A) in subparagraph (E), by striking  
18 “other than paragraph (12) of this subsection,  
19 subsection (d)(9)” and inserting “other than  
20 subsections (d)(9) and (e)(10)”; and

21 (B) by adding at the end the following new  
22 subparagraphs:

23 “(F) CLARIFICATION.—No provision of law  
24 shall be construed as limiting the right or  
25 power of the Corporation, or authorizing any

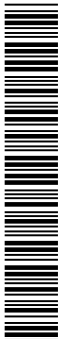


1 court or agency to limit or delay, in any man-  
2 ner, the right or power of the Corporation to  
3 transfer any qualified financial contract in ac-  
4 cordance with paragraphs (9) and (10) of this  
5 subsection or to disaffirm or repudiate any such  
6 contract in accordance with subsection (e)(1) of  
7 this section.

8 “(G) WALKAWAY CLAUSES NOT EFFEC-  
9 TIVE.—

10 “(i) IN GENERAL.—Notwithstanding  
11 the provisions of subparagraphs (A) and  
12 (E), and sections 403 and 404 of the Fed-  
13 eral Deposit Insurance Corporation Im-  
14 provement Act of 1991, no walkaway  
15 clause shall be enforceable in a qualified fi-  
16 nancial contract of an insured depository  
17 institution in default.

18 “(ii) WALKAWAY CLAUSE DEFINED.—  
19 For purposes of this subparagraph, the  
20 term ‘walkaway clause’ means a provision  
21 in a qualified financial contract that, after  
22 calculation of a value of a party’s position  
23 or an amount due to or from 1 of the par-  
24 ties in accordance with its terms upon ter-  
25 mination, liquidation, or acceleration of the



1 qualified financial contract, either does not  
2 create a payment obligation of a party or  
3 extinguishes a payment obligation of a  
4 party in whole or in part solely because of  
5 such party's status as a nondefaulting  
6 party.''.  
7

8 (2) TECHNICAL AND CONFORMING AMEND-  
9 MENT.—Section 11(e)(12)(A) of the Federal Deposit  
10 Insurance Act (12 U.S.C. 1821(e)(12)(A)) is amend-  
11 ed by inserting “or the exercise of rights or powers  
12 by” after “the appointment of”.

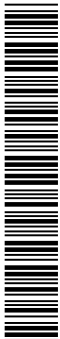
13 (b) NATIONAL CREDIT UNION ADMINISTRATION  
14 BOARD.—

15 (1) IN GENERAL.—Section 207(c)(8) of the  
16 Federal Credit Union Act (12 U.S.C. 1787(c)(8)) is  
17 amended—

18 (A) in subparagraph (E) (as amended by  
19 section 901(h)), by striking “other than para-  
20 graph (12) of this subsection, subsection  
21 (b)(9)” and inserting “other than subsections  
22 (b)(9) and (c)(10)”; and

23 (B) by adding at the end the following new  
24 subparagraphs:

25 “(F) CLARIFICATION.—No provision of law  
shall be construed as limiting the right or

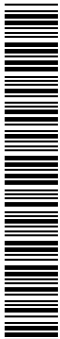


1 power of the Board, or authorizing any court or  
2 agency to limit or delay, in any manner, the  
3 right or power of the Board to transfer any  
4 qualified financial contract in accordance with  
5 paragraphs (9) and (10) of this subsection or to  
6 disaffirm or repudiate any such contract in ac-  
7 cordance with subsection (c)(1) of this section.

8 “(G) WALKAWAY CLAUSES NOT EFFEC-  
9 TIVE.—

10 “(i) IN GENERAL.—Notwithstanding  
11 the provisions of subparagraphs (A) and  
12 (E), and sections 403 and 404 of the Fed-  
13 eral Deposit Insurance Corporation Im-  
14 provement Act of 1991, no walkaway  
15 clause shall be enforceable in a qualified fi-  
16 nancial contract of an insured credit union  
17 in default.

18 “(ii) WALKAWAY CLAUSE DEFINED.—  
19 For purposes of this subparagraph, the  
20 term ‘walkaway clause’ means a provision  
21 in a qualified financial contract that, after  
22 calculation of a value of a party’s position  
23 or an amount due to or from 1 of the par-  
24 ties in accordance with its terms upon ter-  
25 mination, liquidation, or acceleration of the





1 qualified financial contract, either does not  
2 create a payment obligation of a party or  
3 extinguishes a payment obligation of a  
4 party in whole or in part solely because of  
5 such party's status as a nondefaulting  
6 party.''.  
7

8 (2) TECHNICAL AND CONFORMING AMEND-  
9 MENT.—Section 207(c)(12)(A) of the Federal Credit  
10 Union Act (12 U.S.C. 1787(c)(12)(A)) is amended  
11 by inserting “or the exercise of rights or powers by”  
12 after “the appointment of”.

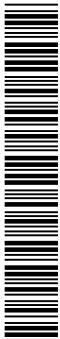
13 **SEC. 903. AMENDMENTS RELATING TO TRANSFERS OF**  
14 **QUALIFIED FINANCIAL CONTRACTS.**

15 (a) FDIC-INSURED DEPOSITORY INSTITUTIONS.—

16 (1) TRANSFERS OF QUALIFIED FINANCIAL  
17 CONTRACTS TO FINANCIAL INSTITUTIONS.—Section  
18 11(e)(9) of the Federal Deposit Insurance Act (12  
19 U.S.C. 1821(e)(9)) is amended to read as follows:

20 “(9) TRANSFER OF QUALIFIED FINANCIAL CON-  
21 TRACTS.—

22 “(A) IN GENERAL.—In making any trans-  
23 fer of assets or liabilities of a depository institu-  
24 tion in default which includes any qualified fi-  
25 nancial contract, the conservator or receiver for  
such depository institution shall either—



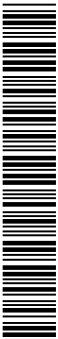
1           “(i) transfer to one financial institu-  
2           tion, other than a financial institution for  
3           which a conservator, receiver, trustee in  
4           bankruptcy, or other legal custodian has  
5           been appointed or which is otherwise the  
6           subject of a bankruptcy or insolvency  
7           proceeding—

8           “(I) all qualified financial con-  
9           tracts between any person or any af-  
10          filiate of such person and the deposi-  
11          tory institution in default;

12          “(II) all claims of such person or  
13          any affiliate of such person against  
14          such depository institution under any  
15          such contract (other than any claim  
16          which, under the terms of any such  
17          contract, is subordinated to the claims  
18          of general unsecured creditors of such  
19          institution);

20          “(III) all claims of such deposi-  
21          tory institution against such person or  
22          any affiliate of such person under any  
23          such contract; and

24          “(IV) all property securing or  
25          any other credit enhancement for any



1 contract described in subclause (I) or  
2 any claim described in subclause (II)  
3 or (III) under any such contract; or

4 “(ii) transfer none of the qualified fi-  
5 nancial contracts, claims, property or other  
6 credit enhancement referred to in clause (i)  
7 (with respect to such person and any affil-  
8 iate of such person).

9 “(B) TRANSFER TO FOREIGN BANK, FOR-  
10 EIGN FINANCIAL INSTITUTION, OR BRANCH OR  
11 AGENCY OF A FOREIGN BANK OR FINANCIAL IN-  
12 STITUTION.—In transferring any qualified fi-  
13 nancial contracts and related claims and prop-  
14 erty under subparagraph (A)(i), the conservator  
15 or receiver for the depository institution shall  
16 not make such transfer to a foreign bank, fi-  
17 nancial institution organized under the laws of  
18 a foreign country, or a branch or agency of a  
19 foreign bank or financial institution unless,  
20 under the law applicable to such bank, financial  
21 institution, branch or agency, to the qualified  
22 financial contracts, and to any netting contract,  
23 any security agreement or arrangement or other  
24 credit enhancement related to one or more  
25 qualified financial contracts, the contractual



1 rights of the parties to such qualified financial  
2 contracts, netting contracts, security agree-  
3 ments or arrangements, or other credit en-  
4 hancements are enforceable substantially to the  
5 same extent as permitted under this section.

6 “(C) TRANSFER OF CONTRACTS SUBJECT  
7 TO THE RULES OF A CLEARING ORGANIZA-  
8 TION.—In the event that a conservator or re-  
9 ceiver transfers any qualified financial contract  
10 and related claims, property, and credit en-  
11 hancements pursuant to subparagraph (A)(i)  
12 and such contract is cleared by or subject to the  
13 rules of a clearing organization, the clearing or-  
14 ganization shall not be required to accept the  
15 transferee as a member by virtue of the trans-  
16 fer.

17 “(D) DEFINITIONS.—For purposes of this  
18 paragraph, the term ‘financial institution’  
19 means a broker or dealer, a depository institu-  
20 tion, a futures commission merchant, or any  
21 other institution, as determined by the Corpora-  
22 tion by regulation to be a financial institution,  
23 and the term ‘clearing organization’ has the  
24 same meaning as in section 402 of the Federal



1           Deposit Insurance Corporation Improvement  
2           Act of 1991.”.

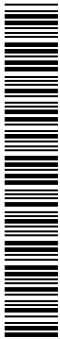
3           (2) NOTICE TO QUALIFIED FINANCIAL CON-  
4           TRACT COUNTERPARTIES.—Section 11(e)(10)(A) of  
5           the Federal Deposit Insurance Act (12 U.S.C.  
6           1821(e)(10)(A)) is amended in the material imme-  
7           diately following clause (ii) by striking “the conser-  
8           vator” and all that follows through the period and  
9           inserting the following: “the conservator or receiver  
10          shall notify any person who is a party to any such  
11          contract of such transfer by 5:00 p.m. (eastern time)  
12          on the business day following the date of the ap-  
13          pointment of the receiver in the case of a receiver-  
14          ship, or the business day following such transfer in  
15          the case of a conservatorship.”.

16          (3) RIGHTS AGAINST RECEIVER AND CONSER-  
17          VATOR AND TREATMENT OF BRIDGE BANKS.—Sec-  
18          tion 11(e)(10) of the Federal Deposit Insurance Act  
19          (12 U.S.C. 1821(e)(10)) is amended—

20                 (A) by redesignating subparagraph (B) as  
21                 subparagraph (D); and

22                 (B) by inserting after subparagraph (A)  
23                 the following new subparagraphs:

24                         “(B) CERTAIN RIGHTS NOT ENFORCE-  
25                         ABLE.—



1           “(i) RECEIVERSHIP.—A person who is  
2           a party to a qualified financial contract  
3           with an insured depository institution may  
4           not exercise any right that such person has  
5           to terminate, liquidate, or net such con-  
6           tract under paragraph (8)(A) of this sub-  
7           section or section 403 or 404 of the Fed-  
8           eral Deposit Insurance Corporation Im-  
9           provement Act of 1991, solely by reason of  
10          or incidental to the appointment of a re-  
11          ceiver for the depository institution (or the  
12          insolvency or financial condition of the de-  
13          pository institution for which the receiver  
14          has been appointed)—

15               “(I) until 5:00 p.m. (eastern  
16               time) on the business day following  
17               the date of the appointment of the re-  
18               ceiver; or

19               “(II) after the person has re-  
20               ceived notice that the contract has  
21               been transferred pursuant to para-  
22               graph (9)(A).

23           “(ii) CONSERVATORSHIP.—A person  
24           who is a party to a qualified financial con-  
25           tract with an insured depository institution



1 may not exercise any right that such per-  
2 son has to terminate, liquidate, or net such  
3 contract under paragraph (8)(E) of this  
4 subsection or section 403 or 404 of the  
5 Federal Deposit Insurance Corporation  
6 Improvement Act of 1991, solely by reason  
7 of or incidental to the appointment of a  
8 conservator for the depository institution  
9 (or the insolvency or financial condition of  
10 the depository institution for which the  
11 conservator has been appointed).

12 “(iii) NOTICE.—For purposes of this  
13 paragraph, the Corporation as receiver or  
14 conservator of an insured depository insti-  
15 tution shall be deemed to have notified a  
16 person who is a party to a qualified finan-  
17 cial contract with such depository institu-  
18 tion if the Corporation has taken steps  
19 reasonably calculated to provide notice to  
20 such person by the time specified in sub-  
21 paragraph (A).

22 “(C) TREATMENT OF BRIDGE BANKS.—  
23 The following institutions shall not be consid-  
24 ered to be a financial institution for which a  
25 conservator, receiver, trustee in bankruptcy, or



1 other legal custodian has been appointed or  
2 which is otherwise the subject of a bankruptcy  
3 or insolvency proceeding for purposes of para-  
4 graph (9):

5 “(i) A bridge bank.

6 “(ii) A depository institution orga-  
7 nized by the Corporation, for which a con-  
8 servator is appointed either—

9 “(I) immediately upon the orga-  
10 nization of the institution; or

11 “(II) at the time of a purchase  
12 and assumption transaction between  
13 the depository institution and the Cor-  
14 poration as receiver for a depository  
15 institution in default.”.

16 (b) INSURED CREDIT UNIONS.—

17 (1) TRANSFERS OF QUALIFIED FINANCIAL CON-  
18 TRACTS TO FINANCIAL INSTITUTIONS.—Section  
19 207(c)(9) of the Federal Credit Union Act (12  
20 U.S.C. 1787(c)(9)) is amended to read as follows:

21 “(9) TRANSFER OF QUALIFIED FINANCIAL CON-  
22 TRACTS.—

23 “(A) IN GENERAL.—In making any trans-  
24 fer of assets or liabilities of a credit union in  
25 default which includes any qualified financial





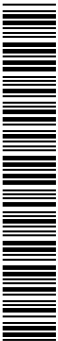
1 contract, the conservator or liquidating agent  
2 for such credit union shall either—

3 “(i) transfer to 1 financial institution,  
4 other than a financial institution for which  
5 a conservator, receiver, trustee in bank-  
6 ruptcy, or other legal custodian has been  
7 appointed or which is otherwise the subject  
8 of a bankruptcy or insolvency proceeding—

9 “(I) all qualified financial con-  
10 tracts between any person or any af-  
11 filiate of such person and the credit  
12 union in default;

13 “(II) all claims of such person or  
14 any affiliate of such person against  
15 such credit union under any such con-  
16 tract (other than any claim which,  
17 under the terms of any such contract,  
18 is subordinated to the claims of gen-  
19 eral unsecured creditors of such credit  
20 union);

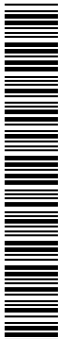
21 “(III) all claims of such credit  
22 union against such person or any af-  
23 filiate of such person under any such  
24 contract; and



1                   “(IV) all property securing or  
2                   any other credit enhancement for any  
3                   contract described in subclause (I) or  
4                   any claim described in subclause (II)  
5                   or (III) under any such contract; or

6                   “(ii) transfer none of the qualified fi-  
7                   nancial contracts, claims, property or other  
8                   credit enhancement referred to in clause (i)  
9                   (with respect to such person and any affil-  
10                  iate of such person).

11                  “(B) TRANSFER TO FOREIGN BANK, FOR-  
12                  EIGN FINANCIAL INSTITUTION, OR BRANCH OR  
13                  AGENCY OF A FOREIGN BANK OR FINANCIAL IN-  
14                  STITUTION.—In transferring any qualified fi-  
15                  nancial contracts and related claims and prop-  
16                  erty under subparagraph (A)(i), the conservator  
17                  or liquidating agent for the credit union shall  
18                  not make such transfer to a foreign bank, fi-  
19                  nancial institution organized under the laws of  
20                  a foreign country, or a branch or agency of a  
21                  foreign bank or financial institution unless,  
22                  under the law applicable to such bank, financial  
23                  institution, branch or agency, to the qualified  
24                  financial contracts, and to any netting contract,  
25                  any security agreement or arrangement or other

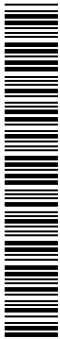


1 credit enhancement related to 1 or more quali-  
2 fied financial contracts, the contractual rights  
3 of the parties to such qualified financial con-  
4 tracts, netting contracts, security agreements or  
5 arrangements, or other credit enhancements are  
6 enforceable substantially to the same extent as  
7 permitted under this section.

8 “(C) TRANSFER OF CONTRACTS SUBJECT  
9 TO THE RULES OF A CLEARING ORGANIZA-  
10 TION.—In the event that a conservator or liqui-  
11 dating agent transfers any qualified financial  
12 contract and related claims, property, and cred-  
13 it enhancements pursuant to subparagraph  
14 (A)(i) and such contract is cleared by or subject  
15 to the rules of a clearing organization, the  
16 clearing organization shall not be required to  
17 accept the transferee as a member by virtue of  
18 the transfer.

19 “(D) DEFINITIONS.—For purposes of this  
20 paragraph—

21 “(i) the term ‘financial institution’  
22 means a broker or dealer, a depository in-  
23 stitution, a futures commission merchant,  
24 a credit union, or any other institution, as



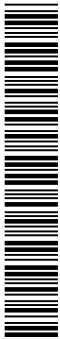
1 determined by the Board by regulation to  
2 be a financial institution; and

3 “(ii) the term ‘clearing organization’  
4 has the same meaning as in section 402 of  
5 the Federal Deposit Insurance Corporation  
6 Improvement Act of 1991.”.

7 (2) NOTICE TO QUALIFIED FINANCIAL CON-  
8 TRACT COUNTERPARTIES.—Section 207(c)(10)(A) of  
9 the Federal Credit Union Act (12 U.S.C.  
10 1787(c)(10)(A)) is amended in the material imme-  
11 diately following clause (ii) by striking “the conser-  
12 vator” and all that follows through the period and  
13 inserting the following: “the conservator or liqui-  
14 dating agent shall notify any person who is a party  
15 to any such contract of such transfer by 5:00 p.m.  
16 (eastern time) on the business day following the date  
17 of the appointment of the liquidating agent in the  
18 case of a liquidation, or the business day following  
19 such transfer in the case of a conservatorship.”.

20 (3) RIGHTS AGAINST LIQUIDATING AGENT AND  
21 CONSERVATOR AND TREATMENT OF BRIDGE  
22 BANKS.—Section 207(c)(10) of the Federal Credit  
23 Union Act (12 U.S.C. 1787(c)(10)) is amended—

24 (A) by redesignating subparagraph (B) as  
25 subparagraph (D); and



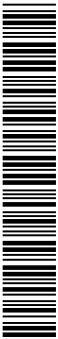
1 (B) by inserting after subparagraph (A)  
2 the following new subparagraphs:

3 “(B) CERTAIN RIGHTS NOT ENFORCE-  
4 ABLE.—

5 “(i) LIQUIDATION.—A person who is  
6 a party to a qualified financial contract  
7 with an insured credit union may not exer-  
8 cise any right that such person has to ter-  
9 minate, liquidate, or net such contract  
10 under paragraph (8)(A) of this subsection  
11 or section 403 or 404 of the Federal De-  
12 posit Insurance Corporation Improvement  
13 Act of 1991, solely by reason of or inci-  
14 dental to the appointment of a liquidating  
15 agent for the credit union institution (or  
16 the insolvency or financial condition of the  
17 credit union for which the liquidating  
18 agent has been appointed)—

19 “(I) until 5:00 p.m. (eastern  
20 time) on the business day following  
21 the date of the appointment of the liq-  
22 uidating agent; or

23 “(II) after the person has re-  
24 ceived notice that the contract has



1           been transferred pursuant to para-  
2           graph (9)(A).

3           “(ii) CONSERVATORSHIP.—A person  
4           who is a party to a qualified financial con-  
5           tract with an insured credit union may not  
6           exercise any right that such person has to  
7           terminate, liquidate, or net such contract  
8           under paragraph (8)(E) of this subsection  
9           or section 403 or 404 of the Federal De-  
10          posit Insurance Corporation Improvement  
11          Act of 1991, solely by reason of or inci-  
12          dental to the appointment of a conservator  
13          for the credit union or the insolvency or fi-  
14          nancial condition of the credit union for  
15          which the conservator has been appointed).

16          “(iii) NOTICE.—For purposes of this  
17          paragraph, the Board as conservator or  
18          liquidating agent of an insured credit  
19          union shall be deemed to have notified a  
20          person who is a party to a qualified finan-  
21          cial contract with such credit union if the  
22          Board has taken steps reasonably cal-  
23          culated to provide notice to such person by  
24          the time specified in subparagraph (A).



1 “(C) TREATMENT OF BRIDGE BANKS.—

2 The following institutions shall not be consid-  
3 ered to be a financial institution for which a  
4 conservator, receiver, trustee in bankruptcy, or  
5 other legal custodian has been appointed or  
6 which is otherwise the subject of a bankruptcy  
7 or insolvency proceeding for purposes of para-  
8 graph (9):

9 “(i) A bridge bank.

10 “(ii) A credit union organized by the  
11 Board, for which a conservator is ap-  
12 pointed either—

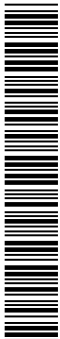
13 “(I) immediately upon the orga-  
14 nization of the credit union; or

15 “(II) at the time of a purchase  
16 and assumption transaction between  
17 the credit union and the Board as re-  
18 ceiver for a credit union in default.”.

19 **SEC. 904. AMENDMENTS RELATING TO DISAFFIRMANCE OR**  
20 **REPUDIATION OF QUALIFIED FINANCIAL**  
21 **CONTRACTS.**

22 (a) FDIC-INSURED DEPOSITORY INSTITUTIONS.—

23 Section 11(e) of the Federal Deposit Insurance Act (12  
24 U.S.C. 1821(e)) is amended—



1 (1) by redesignating paragraphs (11) through  
2 (15) as paragraphs (12) through (16), respectively;

3 (2) by inserting after paragraph (10) the fol-  
4 lowing new paragraph:

5 “(11) DISAFFIRMANCE OR REPUDIATION OF  
6 QUALIFIED FINANCIAL CONTRACTS.—In exercising  
7 the rights of disaffirmance or repudiation of a con-  
8 servator or receiver with respect to any qualified fi-  
9 nancial contract to which an insured depository in-  
10 stitution is a party, the conservator or receiver for  
11 such institution shall either—

12 “(A) disaffirm or repudiate all qualified fi-  
13 nancial contracts between—

14 “(i) any person or any affiliate of  
15 such person; and

16 “(ii) the depository institution in de-  
17 fault; or

18 “(B) disaffirm or repudiate none of the  
19 qualified financial contracts referred to in sub-  
20 paragraph (A) (with respect to such person or  
21 any affiliate of such person).”; and

22 (3) by adding at the end the following new  
23 paragraph:

24 “(17) SAVINGS CLAUSE.—The meanings of  
25 terms used in this subsection are applicable for pur-





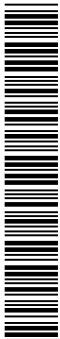
1 poses of this subsection only, and shall not be con-  
2 strued or applied so as to challenge or affect the  
3 characterization, definition, or treatment of any  
4 similar terms under any other statute, regulation, or  
5 rule, including the Gramm-Leach-Bliley Act, the  
6 Legal Certainty for Bank Products Act of 2000, the  
7 securities laws (as that term is defined in section  
8 3(a)(47) of the Securities Exchange Act of 1934),  
9 and the Commodity Exchange Act.”.

10 (b) INSURED CREDIT UNIONS.—Section 207(c) of  
11 the Federal Credit Union Act (12 U.S.C. 1787(c)) is  
12 amended—

13 (1) by redesignating paragraphs (11), (12), and  
14 (13) as paragraphs (12), (13), and (14), respec-  
15 tively;

16 (2) by inserting after paragraph (10) the fol-  
17 lowing new paragraph:

18 “(11) DISAFFIRMANCE OR REPUDIATION OF  
19 QUALIFIED FINANCIAL CONTRACTS.—In exercising  
20 the rights of disaffirmance or repudiation of a con-  
21 servator or liquidating agent with respect to any  
22 qualified financial contract to which an insured cred-  
23 it union is a party, the conservator or liquidating  
24 agent for such credit union shall either—



1           “(A) disaffirm or repudiate all qualified fi-  
2           nancial contracts between—

3                   “(i) any person or any affiliate of  
4                   such person; and

5                   “(ii) the credit union in default; or

6           “(B) disaffirm or repudiate none of the  
7           qualified financial contracts referred to in sub-  
8           paragraph (A) (with respect to such person or  
9           any affiliate of such person).”; and

10          (3) by adding at the end the following new  
11          paragraph:

12               “(15) SAVINGS CLAUSE.—The meanings of  
13               terms used in this subsection are applicable for pur-  
14               poses of this subsection only, and shall not be con-  
15               strued or applied so as to challenge or affect the  
16               characterization, definition, or treatment of any  
17               similar terms under any other statute, regulation, or  
18               rule, including the Gramm-Leach-Bliley Act, the  
19               Legal Certainty for Bank Products Act of 2000, the  
20               securities laws (as that term is defined in section  
21               (a)(47) of the Securities Exchange Act of 1934),  
22               and the Commodity Exchange Act.”.

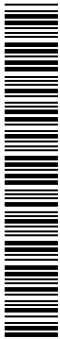


1 **SEC. 905. CLARIFYING AMENDMENT RELATING TO MASTER**  
2 **AGREEMENTS.**

3 (a) FDIC-INSURED DEPOSITORY INSTITUTIONS.—  
4 Section 11(e)(8)(D)(vii) of the Federal Deposit Insurance  
5 Act (12 U.S.C. 1821(e)(8)(D)(vii)) is amended to read as  
6 follows:

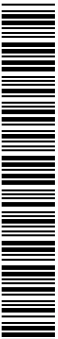
7 “(vii) TREATMENT OF MASTER  
8 AGREEMENT AS ONE AGREEMENT.—Any  
9 master agreement for any contract or  
10 agreement described in any preceding  
11 clause of this subparagraph (or any master  
12 agreement for such master agreement or  
13 agreements), together with all supplements  
14 to such master agreement, shall be treated  
15 as a single agreement and a single quali-  
16 fied financial contract. If a master agree-  
17 ment contains provisions relating to agree-  
18 ments or transactions that are not them-  
19 selves qualified financial contracts, the  
20 master agreement shall be deemed to be a  
21 qualified financial contract only with re-  
22 spect to those transactions that are them-  
23 selves qualified financial contracts.”.

24 (b) INSURED CREDIT UNIONS.—Section  
25 207(c)(8)(D) of the Federal Credit Union Act (12 U.S.C.



1 1787(c)(8)(D)) is amended by inserting after clause (vi)  
2 (as added by section 901(f)) the following new clause:

3 “(vii) TREATMENT OF MASTER  
4 AGREEMENT AS ONE AGREEMENT.—Any  
5 master agreement for any contract or  
6 agreement described in any preceding  
7 clause of this subparagraph (or any master  
8 agreement for such master agreement or  
9 agreements), together with all supplements  
10 to such master agreement, shall be treated  
11 as a single agreement and a single quali-  
12 fied financial contract. If a master agree-  
13 ment contains provisions relating to agree-  
14 ments or transactions that are not them-  
15 selves qualified financial contracts, the  
16 master agreement shall be deemed to be a  
17 qualified financial contract only with re-  
18 spect to those transactions that are them-  
19 selves qualified financial contracts.”.



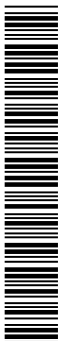
In the amendment made by section 906(b)(1) of the bill to section 403(a) of the Federal Deposit Insurance Corporation Improvement Act of 1991, insert “, paragraphs (8)(E), (8)(F), and (10)(B) of section 207(c) of the Federal Credit Union Act,” after “Deposit Insurance Act”.

In the amendment made by section 906(b)(2) of the bill, adding a new subsection (f) at the end of section 403 of the Federal Deposit Insurance Corporation Improvement Act of 1991, insert “, paragraphs (8)(E), (8)(F), and (10)(B) of section 207(c) of the Federal Credit Union Act,” after “Deposit Insurance Act”.

In the amendment made by section 906(c)(1) of the bill to section 404(a) of the Federal Deposit Insurance Corporation Improvement Act of 1991, insert “, paragraphs (8)(E), (8)(F), and (10)(B) of section 207(c) of the Federal Credit Union Act,” after “Deposit Insurance Act”.

In the amendment made by section 906(c)(2) of the bill, adding a new subsection (h) at the end of section 404 of the Federal Deposit Insurance Corporation Improvement Act of 1991, insert “, paragraphs (8)(E), (8)(F), and (10)(B) of section 207(c) of the Federal Credit Union Act,” after “Deposit Insurance Act”.

In the amendment made by section 907(b)(1) of the bill to section 101(22) of title 11, United States Code, strike “trust company, or receiver” (where such term appears in subparagraph (A) of the paragraph proposed to



be inserted) and insert “trust company, federally-insured credit union, or receiver, liquidating agent,”.

In the amendment made by section 907(b)(1) of the bill to section 101(22) of title 11, United States Code, insert “liquidating agent,” after “receiver,” (the 2d place such term appears in subparagraph (A) of the paragraph proposed to be inserted).

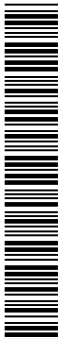
In section 908 of the bill, strike “Section 11(e)(8)” and insert “(a) FDIC-INSURED DEPOSITORY INSTITUTIONS.—Section 11(e)(8)”.

Insert the following new subsection at the end of section 908 of the bill:

1       (b) INSURED CREDIT UNIONS.—Section 207(c)(8) of  
2 the Federal Credit Union Act (12 U.S.C. 1787(c)(8)) is  
3 amended by adding at the end the following new subpara-  
4 graph:

5               “(H) RECORDKEEPING REQUIREMENTS.—

6               The Board, in consultation with the appropriate  
7 Federal banking agencies, may prescribe regula-  
8 tions requiring more detailed recordkeeping by  
9 any insured credit union with respect to quali-  
10 fied financial contracts (including market valu-  
11 ations) only if such insured credit union is in



- 1 a troubled condition (as such term is defined by
- 2 the Board pursuant to section 212).”.

